# VIRGINIA LAW REGISTER

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All Communications should be addressed to the PUBLISHERS.

**The Virginia State Bar Association.**

The 18th annual meeting of the Virginia State Bar Association was held at the Virginia Hot Springs on the 7th, 8th and 9th of August. The meeting was more largely attended than usual and was an exceedingly enjoyable occasion. Over a hundred members were present on Tuesday when the President, Hon. A. A. Phlegar, called the meeting to order. His address was a most admirable and useful article upon the work of the last Virginia Legislature, the distinguished gentleman being a member of the Senate. As we publish this article in our present number we need do no more than call attention to the fact that it is so published, in order to command the attention of our readers.

Mr. Hilton Jackson of the Washington and Virginia Bar, on the night of that day read a most carefully prepared and learned article on the "Dismemberment of Virginia." This paper not only showed historical research and legal ability, but evinced a degree of careful preparation which was a high compliment to the Association and reflected great credit upon the learned gentleman who devoted his time and talent to the subject. The matter was treated not only from a legal but from a historical standpoint, showing the diversities which existed both from the geographical situation and racial differences between the people of the two Virginias, though the conclusions reached by the learned gentleman were those which are reached by all who have given careful thought to the subject—namely, that the formation of West Virginia and its admission into the Union was absolutely illegal and unconstitutional.

On Wednesday morning Mr. W. T. Shields of the Lexington Bar read a paper upon the "Trial of Major Andre," which was greatly enjoyed by all whose privilege it was to hear it. Both in

literary finish and research this paper was worthy of the subject and of the occasion.

On Wednesday night Captain Micajah Woods of the Albemarle Bar made an innovation which was much enjoyed, by delivering an oral address upon the "Duties and Responsibilities of the Commonwealth's Attorney in Virginia." Captain Woods spoke without manuscript, with his usual force and vigor, giving his delighted audience a description of the learned and able men who preceded him as Commonwealth's Attorney of Albemarle, this county having had only three Commonwealth's Attorneys from 1850 to the present time. Captain Woods called attention to the injustice of certain duties placed upon the Commonwealth's Attorney without adequate compensation. His description of the high character which the Commonwealth's Attorneys of the State should bear, and of the good which lawyers of standing in that position can accomplish, was not only eloquent but worthy of the attention of the people of the State.

On Thursday morning the annual address was delivered by Mr. Justice David J. Brewer of the United States Supreme Court. His subject was "The Two Periods in the History of the Supreme Court"—the period of national stability, from the foundation of the government to the Civil War; and the period of national enlargement, from the close of the war to the present. It is seldom, if ever, that Virginia lawyers have listened to such an able and important address, or been more profoundly stirred. The address was bold, eloquent, and rang with no uncertain sound. He vigorously criticised the present colonial policy of the government, the growth of paternalism, as well as centralization, and warned his hearers of the passing of the power of the people into the hands of a government by committee, and of the tremendous inroads that have been made upon our constitutional government as framed by the fathers, by the gradual growth of the power of the general government and the subordination of the rights reserved to the states, through the Interstate Commerce Clause in the Constitution. The evils of party legislation, of our colonial policy and of enlarging the terms of the Constitution were dwelt upon in a way that showed that the learned justice was in full accord with the conservative element of the

American people. The address was enthusiastically applauded from start to finish; five thousand copies were ordered to be printed in addition to the usual number in the reports, and the learned justice was overwhelmed with compliments and thanks from the delighted members of the Virginia Bar, to whom his address read like a page from the glorious days of the Fathers.

The annual banquet took place on Thursday night. It was characterized by most pleasant good feeling, by the short number of toasts, and by the excellent responses thereto. Judge Phlegar presided with wit and exceeding good taste; Justice Brewer, Professor Mitchell of Richmond College, Professor William R. Abbott, C. F. Moore, and the Hon. John Goode replied to the regular toasts, and in response to a call the Hon. Harry St. George Tucker spoke upon Jamestown with his usual eloquence, readiness and wit. The speeches at the banquet were of an unusually high order and the whole affair was much enjoyed. The presence of the wives and daughters of a large number of the members added very much to the pleasure of what was truly a delightful, interesting and useful meeting.

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**Right of Attorneys to Withdraw from Case.**

An interesting question, and one which is untouched both by the Code and our decisions so far as we can learn, is, as to the right of an attorney to withdraw from a case already begun by him, because another attorney is associated with him by the client with whom he is unwilling to serve, and still claim compensation for work already done. The question is answered by the Court of Appeals of New York in an able opinion. In Tenney *v.* Berger, 48 N. Y. Super. Ct. 11, affirmed in 93 N. Y. 524, it appeared that plaintiff had been retained by the defendant as her attorney in a contest about the probate of a will, on the understanding that she was to act under the advice and direction of specified counsel. In the course of the proceeding another person was, without plaintiff's knowledge or consent, called into the case and took his place with plaintiff in court, whereupon plaintiff complained to his client stating that he had personal and professional objections to being associated with another person,

and on account of these objections withdrew from the case. The court, in holding the withdrawal justifiable and the client liable for services rendered, said: "The attorney is always interested to know with whom he is to be associated in trial of a cause. The counsel is supposed to be his superior and is usually employed on account of his superior ability, experience, reputation or professional standing, and after an attorney has engaged in a cause, it would seem to be quite proper that he should be consulted as to the person who is to bear the important relation to him of counsel. The client would certainly have no right, against the protest of the attorney, to introduce as counsel in the case a person of bad character or of much inferior standing and learning—one not capable of giving discreet or able advice. It would humiliate an attorney to sit down to the trial of a cause and see his case ruined by the mismanagement of counsel. The relations between attorney and counsel, too, are of a delicate and confidential nature. They should have faith in each other, and their relations should be such that they can cordially co-operate. While a client has the undoubted right to employ any counsel he chooses, yet it is fair and proper, and professional etiquette requires that he should consult the attorney and other counsel in the case, so that they can withdraw, if for any reason they do not desire to be associated with him."

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**Revocability of Pardon.**

Can the governor of a state, after granting an absolute pardon to a convict, revoke the pardon and remand the accused to the penitentiary to serve out the balance of his sentence? The question has seldom been raised in any judicial tribunal, but there can be no doubt that such pardon is irrevocable, even though obtained by a deception; by "playing possum," or under the pretense of mortal illness. But the governor of the state of Washington takes the opposite view, and the legality of his action in revoking the pardon and consigning the subject to the penitentiary, is now before the Supreme Court of that state. The governor was sustained by the lower court. The case is as follows: A man residing in the state of Washington

was duly convicted of murder and sentenced to life imprisonment. After a short time he seemingly became so ill that the physicians pronounced him at the point of death. So many touching appeals were presented to the governor for his pardon, in order that he might die at home, that he yielded to these entreaties, granting a full, unconditional pardon. But in this case, as in the famous Knapp case in Ohio, the pardon was the very medicine his disease needed, and quickly responding to treatment, was convalescent in a short time. Besides this, he became so healthy that he evinced a tendency to return to his old habits, whereupon the governor revoked the pardon, and remanded him to jail. Morally this action on the part of the chief executive is unimpeachable, legally it cannot be sustained; the authorities, without any conflict whatever, deny to the governor the power to revoke an unconditional pardon, holding the pardon, when delivered, to be irrevocable. The fraud practiced in this case was no greater than that in the case of Knapp *v.* Thomas, 39 O. St. 377. In that case by eating unwholesome articles, and by other devices, he made himself to appear to be in imminent danger of death, for the purpose of fraudulently procuring a pardon from the governor; and fraudulently inducing the physician of the penitentiary to make the certificate, and the warden to make the recommendation, thus obtained the pardon. The court, quoting from United States *v.* Hughes, 1 Bond 574, Fed. Case No. 15, 418, said: "It is far better that he should escape punishment than that a plain principle of law should be set at naught." Indeed, it would not only be contrary to principle that the governor should be invested with such authority, but the power itself would be of the most dangerous and pernicious character. Great evils would inevitably flow, in ways that may readily be suggested, from the exercise of any such power; and hence, no such power should exist. We confidently expect a decision from that court in accordance with our views.

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In a work by a distinguished English legal writer, there is a table, prepared, it is said, by "a very eminent American jurist," of the relative value and authority outside their respective states

**Standing of State Reports.** of the American Reported Decisions. They are divided into four classes, A, B, C and D. A stands for very high and D for very low. B and C and "middling." Under A are placed all the Federal Reports, both Supreme and Circuit, all the reports of Massachusetts and Pennsylvania, and all the reports of New York, except Anthon. Under "D" (a sort of index expurgatorius, for the English Bar, we suppose), no fewer than nineteen reporters have the misfortune (in several cases quite well deserved) to figure. Kentucky and Tennessee lead the procession, Bibb, Hardin, A. K. and J. J. Marshall, Monroe, Peck, Martin and Yerger, Humphrey, Cooke and Yerger all appearing. Ohio appears twice (Wright and Hammond), and Alabama (Porter), North Carolina (Martin), Connecticut (Kirby), Maryland (Harris & McHenry), Indiana (Blackford), Virginia (Va. Cas.), and New York (Anthon), each one. All the rest of the reports and reporters are rated "B" and "C,"—fair and middling.

## NOTES OF CASES.

**State—Suits against.**—A suit against a state officer to cancel a tax title is held in Sanders *v.* Saxton (N. Y.) 1 L. R. A. (N. S.) 727, to be within the rule that a state cannot be sued.

**Municipal Corporations—Water Companies—Consumer's Right.**—A consumer's right to maintain a suit to compel a water company to furnish water at rates stipulated in a contract with municipality is upheld in Pond *v.* New Rochelle Water Co. (N. Y.) 1 L. R. A. (N. S.) 958.

**Adverse Possession—What Constitutes.**—Inclosure of a right of way is held in Pritchard *v.* Lewis (Wis.) 1 L. R. A. (N. S.) 565, not to be sufficient possession to ripen into an adverse title.

A grantee from a mortgagor, who takes possession of a strip beyond the true boundary line, is held in Thornely *v.* Andrews (Wash.) 1 L. R. A. (N. S.) 1036, not to be in adverse possession as against the mortgagee until the mortgage becomes due.

**Criminal Law—Questions by Jurymen.**—The failure of the court, in a criminal case, to interpose objections to improper questions made